Judge Marc L. Barreca
Chapter 7

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN, Debtor.	Bankruptcy No. 10-19817
RONALD G. BROWN, solely in his capacity as Chapter 7 Trustee of the estate of Adam Grossman, Plaintiff, v. KEYWEST FINANCIAL, LLC, A Georgia Corporation, and IRENE MILLER and JOHN DOE MILLER, husband and wife, and the marital community composed thereof, and 868 MONTCREST DRIVE FAMILY TRUST, and 20710 GLENVIEW DRIVE FAMILY TRUST, and PTARMIGAN REAL ESTATE FUND, LLC, and TERRINGTON DAVIES CAPITAL MANAGEMENT, LLC Defendants.	Adversary No. __________ COMPLAINT TO 1) AVOID AND RECOVER UNAUTHORIZED POST-PETITION TRANSFERS; 2) AVOID AND RECOVER FRAUDULENT TRANSFERS; 3) TO COMPEL TURNOVER OF PROPERTY OF THE ESTATE; 4) FOR CONVERSION; 5) FOR ACCOUNTING; AND 6) FOR EQUITABLE SUBORDINATION

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

I. INTRODUCTION

RONALD G. BROWN, solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Adam Grossman, by and through his attorneys, Wood & Jones, P.S., seeks to avoid the transfer of all or the majority of the assets of the Debtor on the basis that the transfers constitute unauthorized post-petition transfers, fraudulent transfers, conversion, to compel turnover of property of the estate; for an accounting and for subordination of any claims of the Defendants.

II. JURISDICTION AND VENUE

2.1 This is an action to recover estate property by avoiding unauthorized post-petition transfers, fraudulent transfers, conversion, to compel turnover of property of the estate, for an accounting and to equitably subordinate the claims of all Defendants and thus is a "core proceeding" pursuant to 28 U.S.C. §157(b)(2)(B), (C), (E), (H), and (O).

2.2 This Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. §157(a) and (b), 1334(a) and (b), and 11 U.S.C. §§105, 510, 542, 543, 544, 548, 549, 550 and 551.

2.3 This matter has been referred to the Bankruptcy Judges of the District pursuant to General Rule 7 of the Rules for the United States District Court for the Western District of Washington.

2.4 Venue is proper under 28 U.S.C. §1409.

III. PARTIES

3.2 Debtor. Adam Grossman ("Grossman" or "Debtor") filed this current bankruptcy proceeding as a voluntary chapter 11 bankruptcy petition on August 19, 2010 ("Current Bankruptcy Petition Date"). The Current Bankruptcy was converted to a Chapter 7 pursuant to court order dated March 11, 2011 ("Conversion Date").

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303 N. 67th Street
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3.3 Trustee. Ronald G. Brown was appointed as the Chapter 11 Trustee pursuant to Court Order dated December 22, 2010. Ronald Brown ("Brown" or "Trustee") was appointed as the Chapter 7 Trustee pursuant to Court order dated March 11, 2011. The Trustee is authorized to bring this action pursuant to §§105, 510, 542, 543, 544, 548, 549, 550 and 551 of the Bankruptcy Code and does so solely in his capacity as Trustee for the Grossman estate.

3.4 Defendant Keywest Financial, LLC.. Upon information and belief Keywest Financial, LLC ("Keywest") is a Georgia corporation.

3.5 Defendants Irene Miller and John Doe Miller. Upon information and belief Irene Miller and John Doe Miller are husband and wife and are residents of the State of California. Any act done by one was done for the benefit of the marital community.

3.6 Defendant 868 Montcrest Drive Family Trust. Upon information and belief the Trustee alleges that 868 Montcrest Drive Family Trust was set up by the Debtor for the sole purpose of holding title to the 868 Montcrest Drive Family Trust.

3.7 Defendant 20710 Glenview Drive Family Trust. Upon information and belief the Trustee alleges that the 20710 Glenview Drive Family Trust was set up by the debtor, post-petition, for the purpose of holding title to the 20710 Glenview Drive, Redding, California Property.

3.8 Defendant Ptarmigan Real Estate Fund, LLC. Upon information and belief the Trustee alleges that Ptarmigan Real Estate Fund, LLC is a Delaware Corporation which was solely owned by the Debtor as of the Current Bankruptcy Petition Date.

3.9 Defendant Terrington Davies Capital Management, LLC. Upon information and belief the Trustee alleges that Terrington Davies Capital Management, LLC was set up by and solely owned by the Debtor as of the Current Bankruptcy Petition Date.

IV. STATEMENT OF FACTS

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

41 The debtor filed a voluntary chapter 11 bankruptcy petition on June 25, 2010 which was assigned case number 10-17334. The debtor did not file schedules and accordingly the case was dismissed on July 22, 2010 (docket #24).

4.2 The debtor filed a voluntary chapter 11 bankruptcy petition on July 27, 2010 which was assigned case number 10-18671. The debtor did not meet the minimal filing requirements and this case was also dismissed, on August 10, 2010 (docket #24).

4.3 The debtor filed this current bankruptcy proceeding as a voluntary chapter 11 bankruptcy petition on August 19, 2010 ("Current Bankruptcy"). Because of the two prior dismissed bankruptcy cases the automatic stay is not in effect in relation to this case.

4.4 The debtor was at all times during 2010 engaged in a very contentious divorce with his ex-wife which was pending in King County Superior Court under case number 09-3-02955-9. The Petition for Dissolution was filed by the wife on April 15, 2009.

4.5 The filing of the Current Bankruptcy did not stay the divorce action as it had in the previous two cases because the automatic stay was no longer in place. An Order confirming no stay was in place was entered on November 12, 2010, prior to the commencement of the dissolution trial.

4.6 A trial was held on or about November 15, 2010 in the King County divorce proceeding. The Decree of Dissolution was entered on December 14, 2010.

4.7 The debtor historically has been actively involved in the asset management industry. It is the debtor's common practice to use a two-entity structure to manage the assets under his control. The two entity structure consisting of one legal entity which exists merely to hold client assets (the "Fund") and a second legal entity which manages the client assets in the fund (the "Advisor"). The Fund pays fees to the Advisor based on the size and performance of the Fund.

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303 N. 67th Street
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4.8 The debtor formed the Terrington Davies Tanager Fund LP ("Tanager Fund") as a limited partnership in 2006 with his friend Jeffrey Bernstein who is an attorney. The General Partner of the Tanager Fund is Terrington Davies, LLC.

4.9 Upon information and belief the Trustee alleges that Terrington Davies, LLC was incorporated in 2006 and is owned 2/3rds by the debtor and 1/3 by Jeffrey Bernstein. The debtor and Mr. Bernstein received disbursements from Terrington Davies whenever there were retained earnings available for distribution.

4.10 The Tanager Fund was capitalized when 250,000 units were sold for $1 per unit in June of 2006. The debtor and his then wife, Jill Borodin, provided $220,000 of the initial $250,000 investment, thereby acquiring 220,000 units.

4.11 The value of the units has varied over time based on the performance of the Tanager Fund. The units have had a value as high as $1.88 per unit and a low of .93 cents per unit.

4.12 The limited partners of the Tanager Fund had the unconditional right to redeem all or part of their capital investment at any time.

4.13 The Tanager Fund held client assets, solely in the form of securities within one single Schwab One Brokerage account held in the name of Terrington Davies Tanager Fund LP.

4.14 Anytime a disbursement was made or a unit redeemed from Tanager Fund the money was transferred to Terrington Davies bank account and then the disbursement checks were cut from the Terrington Davies bank account.

4.15 Terrington Davies was given a monthly fee for its services as manager/advisor of the Tanager Fund.

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303 N. 67th Street
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4.16 Upon information and belief the Trustee alleges that shortly after the Petition for Dissolution was filed the debtor began to liquidate the assets of the Tanager Fund and pull cash out of said fund.

4.17 In May 2009, the debtor attempted to incorporate Ptarmigan Real Estate Fund ("Ptarmigan Fund") in the state of Delaware. At or about the same time he also set up Terrington Davies Capital Management LLC ("TDCM") for the purpose of serving as the Advisor to the Ptarmigan Fund.

4.18 It is unclear whether Ptarmigan was ever incorporated and whether it is nothing more than the shell of a business that the debtor wanted to start, but which was never truly formalized.

4.19 In June of 2009 the debtor redeemed $175,000.00 of community units from the Tanager Fund. The $175,000 was deposited into the Ptarmigan Fund checking account. The debtor then immediately had Ptarmigan cut a check to TDCM in the amount of $175,000.00 which was then deposited into the TDCM checking account. The debtor then wrote a check to Tanager and repurchased the units he had just sold, but in the name of TDCM.

4.20 Essentially, the transfer referred to in the preceding paragraph was nothing more than the debtor laundering the Tanager Fund units out of the joint names of the debtor and his wife and repurchasing them in the name of TDCM which is a corporation controlled solely by the debtor.

4.21 During the first quarter of 2010 the debtor redeemed some of the Tananger Fund units held in the name of Ptarmigan for a price of approximately $230,000.00. Those funds were then transferred to Placer Title Company (which is also an escrow company) to purchase real property located at 868 Montcrest Drive in Redding California ("Montcrest Property").

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4.22 In 2010 and early 2011 the debtor withdrew all cash available to him from the Tanager Fund and ceased to use that entity.

4.23 In 2010 the debtor set up a trust known as the Montcrest Family Trust. Ptarmigan is the beneficiary to the trust. The trust has no assets other than the Montcrest property.

Transfer of Glenview Property and interest in TDCM to Irene Miller

4.24 On September 24, 2010, while this Current Bankruptcy was pending, the debtor entered into a Residential Lease or Month-to-Month Rental Agreement with Irene Miller in relation to real property located at 20710 Glenview Drive, Cottonwood, CA ("Glenview Property").

4.25 While the document caption indicates this was a lease, in fact it was an option to purchase.

4.26 Irene Miller paid $20,000.00 to the debtor on or about September 24, 2010 as an option payment and down payment for the Glenview Property. This payment was not disclosed in the dissolution proceeding.

4.27 On or about December 17, 2010 Irene Miller became a member of TDCM. No consideration was paid to the debtor for Irene Miller's acquisition of the TDCM membership interest.

4.28 Upon information and belief the Trustee alleges that at some point in time the Glenview Property was transferred to a trust set up by or at the request of the debtor known as the 20710 Glenview Drive Family Trust.

4.29 Upon information and belief the Trustee alleges that TDCM was the beneficiary of 20710 Glenview Drive Family Trust and Irene Miller was the Trustee of the 20710 Glenview Drive Family Trust.

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4.30 On June 25, 2011 Irene Miller, as the Trustee of the 20710 Glenview Drive Family Trust, executed a Grant Deed transferring the Glenview Property to Keywest Financial, LLC.

4.31 No consideration was paid by Keywest Financial, LLC in exchange for the transfer of the Glenview property.

4.32 While Irene Miller signed the document, the transfer of the Glenview Property was done at the direction of and for the benefit of the debtor.

4.33 There was no court order entered authorizing the debtor to enter into any agreement with Irene Miller, authorizing the transfer of the Glenview Property out of the debtor's name and into the name of a trust, nor any order entered authorizing the transfer of the Glenview Property to Keywest Financial, LLC.

Divorce Decree

4.34 The Debtor was awarded the following property, as his separate property, in the Decree of Dissolution:

A. 2005 Chevy Malibu;

B. Business known as Terrington Davies, LLC;

C. Business known as Terrington Davies Capital Management, LLC;

D. Terrington Davies Tanager Fund LP;

E. Ptarmigan Fund

F. 1679 Strauss Lane, Redding, California;

G. 773 Metro Way, Redding, California;

H. 20710 Glennview Drive, Cottonwood, California

4.35 In the same Decree, the Montcrest Property was awarded to the wife.

Transfers to KeyWest Financial, LLC.

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303 N. 67th Street
Seattle WA 98103
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4.36 On or about December 16, 2010 the debtor and Keywest Financial LLC ("Keywest") entered into an Agreement of Sale pursuant to which the debtor transferred all of the properties referenced in the preceding paragraph above to Keywest for a price of $400,000.00 that was to be paid in 16 quarterly installments of $25,000.00 starting July 1, 2011.

4.37 On December 17, 2010 an Amendment to Agreement of Sale dated December 16, 2010 was entered into by the Debtor and Keywest. Pursuant to that agreement several terms were changed but there was no change to the purchase price.

4.38 It is unclear how the debtor could agree to sell the Glenview Property to Keywest Financial, LLC when he had already granted Irene Miller an option to purchase the Glenview Property.

4.39 To date no payments have been received from Keywest Financial, LLC.

4.40 No motion was filed in the Current Bankruptcy to approve the sale of the assets of the debtor and no plan of reorganization was filed. To date there has never been an ordered entered approving said sale or transfer of any assets to Keywest Financial, LLC..

4.41 The debtor was aware of the fact that he could not sell assets of the estate as he and William Courshon had a discussion about this during his first section 341 meeting conducted on September 28, 2010 (docket #35).

4.42 Also on December 17, 20109 the debtor took the TDCM Operating Agreement and notated on the last page that Jeffrey Bernstein was no longer a member and the new member was now Irene Miller.

4.43 Irene paid no consideration for her interest in TDCM.

4.44 On September 24, 2010 Irene Miller signed a Residential Lease or Month-to-Month Rental Agreement pursuant to which she paid the debtor $20,000.00 in exchange

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for an option to purchase the real property located at 20710 Glenview Drive, Cottonwood, California.

4.45 The option agreement was never disclosed to the Court and no Court order was entered authorizing this transfer.

4.46 Substantial transfers have been made by the debtor to or for the benefit of Keywest Financial, LLC.

4.47 Additional transfers may have been made to or for the benefit to the defendants.

V. FIRST CAUSE OF ACTION - AVOIDANCE OF UNAUTHORIZED POST-PETITION TRANSFERS PURSUANT TO SECTION 549 OF THE BANKRUPTCY CODE

5.1 Paragraphs I through IV and all subsections thereof are hereby repeated and incorporated as though full.

5.2 After the Petition Date the Defendants received unauthorized transfers of property of the estate as set forth in paragraph IV above.

5.3 The transfers of the property set forth in paragraph IV above were not authorized by the Bankruptcy Code or by Court order and were made in violation of the Court order prohibiting transfers.

VI. SECOND CAUSE OF ACTION FRAUDULENT TRANSFERS §548 OF THE CODE AS TO DEFENDANTS

6.1 Paragraphs I through V and all subsections thereof are hereby repeated and incorporated as though set forth herein.

6.2 Within one year of filing the bankruptcy petition herein, and while the Debtor was insolvent, the Debtor made those transfers set forth in paragraph IV above to or for the benefit of Defendants.

6.3 The Debtor did not receive reasonably equivalent value for the transfers set forth in paragraph IV above which were made to or for the benefit of Defendants.

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303 N. 67th Street
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6.4 The Debtor was insolvent on the date of the transfers referenced in paragraph IV above. Alternatively, the Debtor became insolvent as a result such transfers to Defendants.

6.5 The Debtor made the transfers referred to in paragraph IV above to Defendants with actual intent to hinder, delay and defraud creditors to whom the Debtor was indebted on or after the date of the transfers.

6.6 The transfers to Defendants set forth in paragraph IV are avoidable pursuant to 11 U.S.C. §548 as stated therein as they were a) made with actual intent to hinder, delay or defraud creditors to whom the Debtor was indebted on or after the date of the transfers; or b) the Debtor received less than reasonable equivalent value in exchange for the transfers, became insolvent or was insolvent at the time of the transfers, leaving the Debtor with an unreasonably low capital account or leaving the Debtor unable to pay its debts as they matured.

6.7 The transfers made to Defendants as set forth in paragraph IV above are avoidable by the Trustee under 11 U.S.C. §548(a)(1) and/or (a)(2).

VII. THIRD CAUSE OF ACTION – FRAUDULENT CONVEYANCES 11 U.S.C. § 544 AND RCW 19.40. TO DEFENDANTS

7.1 Paragraphs I through VI and all subsections thereof are hereby repeated and incorporated as though fully set forth herein.

7.2 The Debtor made the transfers set forth in paragraph IV above which are avoidable pursuant to RCW 19.40.010 et. seq. as stated therein.

7.3 The transfers by the Debtor to Defendants as set forth in paragraph IV above were made with actual intent to hinder, delay or defraud creditors of the Debtor.

7.4 The transfers by the Debtor to Defendants as set forth in paragraph IV were made without the Debtor receiving reasonably equivalent value in exchange for the transfers.

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303 N. 67th Street
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7.5 The transfers by the Debtor to Defendants as set forth in paragraph IV above caused the Debtor to engage or thereafter engage in business for which the remaining assets of the Debtor were unreasonably small in relation to the business or transactions.

7.6 The transfers by the Debtor to Defendants should have caused the Debtor to believe that he would incur debts beyond his ability to pay as they became due.

7.7 The transfers by the Debtor to Defendants as set forth in paragraph IV above were not made in exchange for reasonably equivalent value.

7.8 The Debtor was insolvent on the date of each and every transfer set forth in paragraph IV above. Alternatively, the Debtor became insolvent as a result of the transfers.

VIII. FIFTH CAUSE OF ACTION – TURNOVER OF PROPERTY OF THE ESTATE 11 U.S.C. § 542

8.1 Paragraphs I through VII and all subsections thereof are hereby repeated and incorporated as though fully set forth herein.

8.2 The Defendants are in possession, custody or control of property that the trustee may use, including but not limited to the debtor's accounts receivable and other assets belonging to the debtor that the Trustee could use and perhaps sell to pay the obligations of this debtor.

IX. SIXTH CAUSE OF ACTION: ACCOUNTING

9.1 Paragraphs I through VIII and all subsections thereof are hereby repeated and incorporated as though fully set forth herein.

9.2 The Plaintiff is entitled to an accounting to determine what, if any funds belong to the debtor have been diverted for the use and benefit of Defendants and what expenses the debtor paid that were to or for the benefit of the Defendants.

X. SEVENTH CAUSE OF ACTION - EQUITABLE SUBORDINATION OF CLAIMS

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

10.1 The Trustee realleges and incorporates by this reference the allegations set forth in paragraphs I through IX.

10.2 All claims of any nature, either pre or post-petition by all Defendants, against the Debtor should be subordinated to the legitimate debts owed to general unsecured creditors pursuant to 11 USC §510(c) and general equitable principals.

XI. EIGHTH CAUSE OF ACTION: CONVERSION

11.1 The Trustee realleges and incorporates by this reference the allegations set forth in paragraphs I through X above.

11.2 The Defendants converted to their own use assets of the Bankruptcy estate, all of which belonged to the Grossman estate.

11.3 The Defendants actions were without lawful justification, willfully interfered with the property interest of the estate and have deprived the estate of possession of its property interests.

11.4 As a result of all Defendants actions the estate has suffered damages in an amount to be proven at trial.

XII. NINTH CAUSE OF ACTION: PRESERVATION OF AVOIDED TRANSFERS

12.1 Paragraphs I through XI above and all subsections thereof are hereby repeated and incorporated as though fully set forth herein.

12.2 Any and all transfers avoided under the claims for relief set forth in Paragraphs I-XI, above, are preserved for the benefit of the estate pursuant to 11 U.S.C. §§ 550 and 551.

XIII. PRAYER FOR RELIEF

13.1 The Trustee asks for the following relief:

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

13.2 That the Court determine the transfers by the Debtor to defendants as set forth in Paragraph IV, above, constitute unauthorized post-petition transfers pursuant to 11 U.S.C. §§549 and 550.

13.3 That the Court determine the transfers by the Debtor to defendants as set forth in Paragraph IV, above, constitute fraudulent conveyances pursuant to section 548 of the Bankruptcy Code.

13.4 That the Court determine that all property of the debtor in the possession of the defendants must be turned over to the trustee pursuant to section 542 and 543 of the Bankruptcy Code.

13.5 That the Court require the Defendants to produce records and account for all funds received by them or for their benefit.

13.6 That the Court determine that any and all claims of all defendants should be equitably subordinated below those of general unsecured creditors.

13.7 That the Court determine all Defendants converted assets of the debtor and are liable to the Trustee for the amount of the assets converted.

13.8 That all transfers avoided be preserved for the benefit of the estate pursuant to §§550 & 551.

16.5 That the Court enter an order consistent with this Complaint and a judgment in an amount to be determined against the Defendants in favor of the Chapter 7 Trustee, Ronald G. Brown, plus interest from the date of the transfers, and such other relief as this Court deems just and proper.

Dated this 5th day of October, 2011.

WOOD & JONES, P.S.

/s/ Denice E. Moewes
Denice E. Moewes, WSB #19464

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

Attorney for Chapter 7 Trustee
Ronald G. Brown

.

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382